

Appl. No. 09/759,864
Atty. Docket No. 7917M
Amdt. dated 10/20/2003
Reply to Office Action of 06/18/2003
Customer No. 27752

REMARKS

Claims 1 - 28 are pending in the present application. No additional claims fee is believed to be due. The Examiner has rejected claims 1-7, 9, 10, 14, 15, 18, 20-22, 24 and 25 as purportedly obvious over the applied reference. The Applicants respectfully request reconsideration of the claim rejections in light of the below Remarks.

Rejection Under 35 USC 103(a) Over JP '003 in view of US '403

Claims 1-7, 9, 10, 14, 15, 18, 20-22, 24 and 25 have been rejected under 35 USC 103(a) as being unpatentable over JP 08092003 (hereinafter "JP '003") and US Patent Number 5500403 to Shafer et al (hereinafter referred to as "US '403"). Applicants respectfully traverse this rejection as JP '003 in combination with US '403 do not establish a *prima facie* case of obviousness because their combination fails to teach or suggest all of Applicants' claim limitations. Therefore, the Applicants assert, and strongly urge, that the claimed invention is unobvious over JP '003 in view of US '403 and that the rejection should be withdrawn.

It is the Applicants' position that JP '003 in combination with US '403 fail to teach or suggest each and every of Applicants' claim limitations and therefore, do not establish a *prima facie* case of obviousness (see MPEP 2143.03). Specifically, the Applicants wish to again note and underscore that the present claims, and specifically claim 1, from which the balance of the above-listed claims ultimately depend, is limited to a system for controlling plant and flower moisture transpiration rates comprising two distinct components. The first component of the system relates to a solution comprising a polymer with a specific water vapor transfer and glass transition temperature. The first component of the claimed system is applied onto the leaves or petals of a plant and/or flower in the form of a microemulsion, as a separate and distinct step from application of the second component of the claimed system.

Indeed, the second component of the claimed system relates to a composition comprising a source of energy useful for the plant and/or flower under consideration and an antimicrobial. The subject plant and/or flower is placed into the second component of the claimed system in an application step that is separate and distinct from application of the first component of said system. To summarize, the first and second components of the claimed system, as recited by present claim 1, relate to the application of materially different compositions using substantially different forms of each component (*e.g.*, in the case of the first component, a microemulsion applied onto the leaves or petals of the subject plant and/or flower is used; in the case of the second component, the subject plant or flower is placed into a solution of said component).

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The Applicants urge that there exists no motivation for a person of ordinary skill in the art to combine JP '003 and US '403. Further, the Applicants urge that even the attempted combination of references would fail to teach and/or suggest each and every limitation of the present claims. Regarding motivation to combine, the Applicants urge that a person of ordinary skill in the art would not be motivated to combine two references that each purport to be independently useful in the preservation of flowers, and that each incorporate an antimicrobial compound. Regarding the scope of the applied references, the Applicants wish to underscore to the Examiner that the references, whether alone or in combination, fail to teach or suggest the use of the claimed system – in two, separate and distinct application steps, and with specific, first and second components. JP'003 fails to teach or suggest application of the claimed composition in the form of a microemulsion onto the leaves and/or petals of the subject flower and/or plant. Similarly, US '403 fails to teach or suggest the use of the claimed composition for placement of the subject plant and/or flower therein, as a separate and distinct step from application of a composition onto the subject leaves or petals in the form of a microemulsion.

In addition, the JP '003 reference fails to teach or suggest the properties of polymers suitable for use in the first component of the claimed system. The Applicants urge that appropriate selection of the polymer for use in the first component is essential to the efficacy of the claimed system. The Applicants respectfully direct the distinguished Examiner's attention to claim 1 of the present application, in which the Applicants have limited suitable polymers for use in the first component to those having a water vapor transfer rate of less than $10\text{g}\cdot\text{mm}/\text{m}^2\cdot\text{day}$ and a glass transition temperature, T_g , greater than about 30°C . The Applicants urge that JP '003 fails to teach or suggest any of the polymers suitable for use herein – nor does JP '003 teach or suggest any selection criteria for suitable polymers. To reiterate, JP '003 further fails to teach the application of a first component in the form of a microemulsion. Accordingly, the Applicants respectfully request reconsideration and withdrawal of the rejection under 35 USC § 103(a) over claims 1-7, 9, 10, 14, 15, 18, 20-22, 24 and 25.

Double Patenting Rejection

The Examiner has provisionally rejected claims 1, 8 and 26 under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 28 of copending patent Application Serial Number 09/759,385. The Examiner acknowledges, "although the conflicting claims are not identical, they are not patentably distinct from each other because both applications claim very similar systems." See Paper No. 14; page 3. The Applicants acknowledge the Examiner's rejection and will file a terminal disclaimer upon notification of allowance of the present claims to obviate this rejection.

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Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the rejection under 35 USC § 103(a). Early and favorable action in the case is respectfully requested. Applicants have made an earnest effort to place their application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, Applicants respectfully request reconsideration of this application and allowance of Claims 1-28. Should the Examiner have any questions regarding the present communication or application, then the Examiner is invited to contact the Applicants' undersigned legal counsel.

Respectfully submitted,

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